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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,
Plaintiff and Respondent,
v.
EDMUND PETERSON, JR.,
Defendant and Appellant.

A106556
(Humboldt County
Super. Ct. No. CR033165S)

Pursuant to a negotiated disposition, appellant Edmund Peterson, Jr. pled guilty to assault with a semiautomatic firearm (Pen. Code, § 245, subd. (b))¹ and admitted the firearm use allegation (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a)(1)). Consistent with the plea agreement, appellant was sentenced to the midterm of six years for the assault and 10 years for the firearm use, for a total of 16 years in state prison. Other felony charges were dismissed.

Relying on *People v. Walker* (1991) 54 Cal.3d 1013, appellant contends that the restitution fine and parole revocation fine “were imposed in violation of appellant[’s] plea bargain.” We disagree and conclude that the record establishes the challenged fines were within the “defendant’s contemplation and knowledge” when he entered his plea (*People v. Panizzon* (1996) 13 Cal.4th 68, 86), and thus not violative of the plea bargain.

¹ Section references are to the Penal Code.

Prior to entry of plea and in connection with advising appellant of “what the consequences are of entering the plea here,” the trial court informed appellant: “Also, the Court could order you to pay a fine of up to \$10,000 on a felony, with a penalty assessment of 170 percent added to any court fine that is imposed. At the time of sentencing, the Court will impose a restitution fine, and by statute that fine is from \$200 up to \$10,000 on a felony. [¶] There also will be assessed an additional identical restitution fine, but that fine is suspended—an additional fine, but that fine is suspended, and remains suspended unless in the future your parole is revoked. Then you would owe that fine as well.” When asked, appellant stated that he had no questions about the terms of the negotiated disposition. He also affirmed that there were no other promises made other than those stated on the record. At sentencing, appellant was ordered to pay \$3,200 as a restitution fine (§ 1202.4) and a similar amount as a parole revocation fine (§ 1202.45), the latter fine being suspended unless appellant violated parole.

The record demonstrates that the challenged fines were part of the negotiated disposition; that appellant was correctly advised of the consequences of the fines prior to entry of his plea; and that he indicated his understanding of those consequences. “The fact that the precise amount of the fine was not specified prior to the entry of defendant’s plea does not change the analysis. To the contrary, it represents defendant’s implicit recognition that the amount of the fine will be left to the sentencing court’s discretion.” (*People v. Knox* (2004) 123 Cal.App.4th 1453, 1461, fn. omitted, petn. for review pending, petn. filed Dec. 13, 2004, S129858; *People v. Dickerson* (2004) 122 Cal.App.4th 1374, petn. for review pending, petn. filed Nov. 16, 2004, S129256.)

People v. Walker, *supra*, 54 Cal.3d 1013, relied on by appellant, is readily distinguishable. In *Walker*, the defendant signed a written plea agreement that did not mention or include a restitution fine. At sentencing, the trial court imposed a \$5,000 restitution fine that was not part of the negotiated disposition. The Supreme Court found that the \$5,000 restitution fine was “a significant deviation from the

negotiated terms of the plea bargain” and reduced the fine to the minimum. (*Id.* at pp. 1029-1030; see also *In re Moser* (1993) 6 Cal.4th 342, 356.)

Here, no judicial advisement concerning the restitution fine was omitted, as in *Walker*, nor was the advisement in error, as in *Moser*. “Rather, this is a case where a full and accurate advisement was both given by the court and acknowledged by the defendant prior to his plea, as in *Panizzon*. Because defendant understood that he would be subject to the restitution fund fine, the sentencing court did not violate the plea bargain in imposing it.” (*People v. Knox, supra*, 123 Cal.App.4th at p. 1463.)

Judgment affirmed.

Reardon, J.

We concur:

Kay, P.J.

Sepulveda, J.